to on accepting such appointment. With respect I think it only right to say that the wording of the Chief Police Officer's letter should not be the deciding factor. Calling a spade a pickaxe does not alter the character of that agricultural implement. Even in the same letter it was stated that the decision taken was because the appellant had failed to exculpate himself.

Assuming, however, that the appellant had been dismissed, the trial judge went on to consider whether the Chief Police Officer was exercising powers delegated to him by the Public Services Commission by virtue of the provisions of clause (6) of article 144 of the Constitution which reads: —

"(6) A Commission to which this Part applies may delegate to any officer in a service to which its jurisdiction extends, or to any board of such officers appointed by it, any of its functions under Clause (1) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and the control of the Commission."

In taking the affirmative view the trial judge was of opinion that the appeal made to the Public Services Commission indicated that the Public Services Commission "was exercising direction and control over the Chief Police Officer in performing the functions which had been delegated to him, within the terms of clause (6) of article 144 of the Constitution." Again, with respect, I must voice my dissent. Having the power to delegate does not necessarily imply that, in any particular case, the Public Services Commission must have delegated its powers to the person professing to exercise such powers. Whether or not the Chief Police Officer was exercising powers delegated to him by the Public Services Commission was a question of fact. It was not pleaded in the defence, much less proved.

Article 139(1) of the Constitution provides for "a Public Services Commission whose jurisdiction shall, subject to article 144 extend *to all persons* who are members of the services mentioned in paragraphs (c) and (f) of clause (1) of article 132 . . . " The appellant was undoubtedly a member of the general public service of the Federation, under paragraph (c).

Clause (1) of article 135 reads: —

"(1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank."

Article 160(1) applies the Interpretation and General Clauses Ordinance 1948 to the interpretation of the Constitution. Section 29 of the Ordinance states that "where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss . . . " At the date of the appellant's dismissal the authority which could have appointed him was the Public Services Commission, which, therefore, was the authority having power to dismiss — not the Chief Police Officer who was subordinate to the Public Services Commission. Not having been delegated the power of dismissal generally or in this particular case, the Chief Police Officer's act was clearly contrary to the Constitution and therefore void: see *S. S. Kanda* v. *Government of the Federation of Malaya*.[1] That the appellant, when accepting appointment in 1953 had expressly agreed to accept one month's notice of termination of his services, is no more an answer to his claim than it was to Inspector Kanda. A public servant is guaranteed security of tenure of his office under Part X of the Constitution, which is the supreme law: see article 4. Just as it is impossible to contract out of the provisions of rent control legislation, *a fortiori* must the terms of the appellant's appointment (including regulation 36 of General Orders, Chapter D) be invalid where it is inconsistent with the Constitution.

The appeal is accordingly allowed and there will be judgment for the appellant as prayed, with costs here and in the court below. His deposit is to be refunded to him.

Gill and **Ali F.JJ.** concurred.

Appeal allowed.

Solicitors: *Nathan & Yang.*

MALAYSIA GALVANISED IRON PIPES SDN. BHD. v. METAL INDUSTRY EMPLOYEES' UNION & ORS.

[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) July 9, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. 26 of 1971]

Industrial Law — Picketing — Whether prohibited — Grant of temporary injunction — Discretion of judge — Trade Unions Ordinance, 1959, ss. 21 & 22 — Industrial Relations Act, 1967, ss. 16A & 41(b).

The appellants had retrenched 18 of their employees and by way of retaliation the retrenched employees erected a temporary shed in front of the appellants' premises and used it for purposes of picketing. The appellants took out a writ against the respondents and applied for an injunction to restrain the employees from obstructing the appellants and this was granted. Subsequently the respondents applied to have the *ex parte* order set aside. Abdul Hamid J. granted the respondents' application and set aside the *ex parte* order. The appellants appealed.

Held, dismissing the appeal: (1) section 41(b) of the Industrial Relations Act, 1967 did not apply to the picketing in this case;

(2) the refusal to grant the temporary injunction was in the exercise of a judicial discretion and it had not been shown that it was against any established principle and it cannot be interfered with.

FEDERAL COURT.

S. Kulasegaran for the appellants.

G. Joseph for the respondents.

Cur. Adv. Vult.

Ali F.J.: This appeal involves the consideration of the Industrial Relations Act, 1967 and the Trade Unions Ordinance, 1959.

The background to this appeal can be stated in a few words. The appellants, a limited company, retrenched 18 of their employees for reasons which do not require consideration here. By way of retaliation the retrenched employees erected a temporary shed 6'x6' in front of the appellant company's premises and used it for purposes which are causing annoyance or inconvenience to the company. According to one

of the appellants' affidavits, the retrenched employees were and are still harassing the company's officials and workers. This alleged act is described in the affidavit as picketing. It would also appear from the affidavit that the first respondent, Metal Industry Employees Union, is also involved in the so-called picketing and that students from the nearby university have also come out publicly to express their sympathy for the retrenched workers' cause, whatever that might be. The police have been called to restore peace and order on one occasion. The appellants have, unsuccessfully, complained to the proper authority about the temporary shed, alleged to be an illegal structure. In those circumstances, they were advised to obtain a court order to restrain those responsible for the situation from harassing their officials and workers and also for the removal of the alleged illegal structure.

A general writ of summons was issued on October 23, 1970 endorsed with claims as follows: —

"(A) The defendants whether by themselves or by their servants and/or agents and/or otherwise howsoever be restrained by injunction until judgment in this action or further order from obstructing the plaintiffs from carrying on their business at No. 12A Jalan Tandang, Petaling Jaya;

(B) The defendants whether by themselves or by their servants and/or agents and/or otherwise remove and pull down the illegal structure erected in front of the company's premises at No. 12A Jalan Tandang, Petaling Jaya and measuring approximately 6'x6';

(C) Damages;

(D) Such further and/or other relief as may be just; and

(E) Costs."

By summons in chambers, also dated October 23, 1970, the appellant company applied, *ex parte*, for orders and reliefs in terms identically same as those endorsed on the writ. On October 26, 1970 Abdul Hamid J. granted the application but made orders only in terms of (A) and (B) above. Whether or not at this stage of the proceedings an order in terms of (B) ought to have been made is a question which I do not wish to consider here. At any rate, nothing seems to have turned on it. The defendants named in the writ, the respondents in this appeal, applied by summons in chambers dated November 5, 1970 to have the *ex parte* orders set aside. There followed a series of affidavits and counter-affidavits which helped to enlarge the size of the appeal record. At the end of it all, Abdul Hamid J. granted the respondents' application and set aside the *ex parte* order made earlier. The company have now appealed against that decision which, in my view, was in the nature of a decision made in interlocutory proceedings in the exercise of the judge's discretionary powers. Whether or not a temporary or *interim* injunction should be issued pending trial is, I think, a matter for the discretion of the judge. The exercise of such a discretion is not to be interfered with, on appeal, unless it is plainly against established principles. The appellants, however, are not appealing along these lines.

The memorandum of appeal covers six pages, all of which contain submissions or views on certain provisions of the Industrial Relations Act, 1967 and of the Trade Unions Ordinance, 1959. At the hearing of this appeal Mr. Kulasegaran, counsel for the appellant company, said in reply to my enquiry that his clients' case is not grounded in tort but in the provisions of the Industrial Relations Act. Needless to say that I was somewhat surprised by this because in one of the several affidavits filed by the appellant company, the word "nuisance" appears several times. However, as I understand Mr. Kulasegaran, his clients' right to the injunction in this case is a right conferred by an Act of Parliament.

Mr. Kulasegaran referred to section 16A of the Industrial Relations Act, 1967 which, he said, covers the present situation inasmuch as the retrenched employees have made a report to the Ministry of Labour. Paragraph 3 of the affidavit affirmed by one of the appellant company's directors, on October 21, 1970. bears this out. In this paragraph the deponent seemed to have assumed that the report was made "pursuant to section 16A". The report is not to be found in the record. On this assumption — I do not think it can be higher than that — Mr. Kulasegaran has argued that in terms of section 16A, there was, therefore, a representation by the dismissed workers to the Minister for Labour. As regards the legal consequence of this he referred to section 41(b) which, in terms. prohibits strikes by employees or lock-outs by employers after a trade dispute or matter has been referred to the Industrial Court. Counsel's contention was that section 41(b) prohibits the so-called picketing by the retrenched workers and those involved in it, *i.e.* the respondents in this appeal. In paragraph 4 of the affidavit referred to above the term "industrial action" was clearly used to include the so-called picketing. Section 41(b) plainly does not apply to every form of industrial action. It speaks only of strikes and, needless to say, strikes and picketing are two different things altogether. At this point, it must be clear that Mr. Kulasegaran has reached a dead end. There is nothing else in the Industrial Relations Act which he can rely upon to support this appeal.

The learned trial judge in this case has refused the appellant company's application for temporary injunctions on grounds that section 21 or 22 of the Trade Unions Ordinance, 1959 protects the Metal Industry Employees' Union, a registered trade union, from civil proceedings and there was nothing in the appellant company's affidavit which could bring this case outside the scope of any of those provisions. The learned trial judge also held that no case for injunction has been made out against the other two defendants named in the writ. Thus, so far as the decision of the learned judge was based on the affidavit evidence before him, I do not think the appellant company can possibly say that the trial judge was wrong. Further, so far as the refusal to grant temporary injunction was in the exercise of a judicial discretion, it has not been shown by the appellant company that it was against any established principle.

I would accordingly dismiss this appeal with costs here and below.

Ong C.J. (Malaya) and **Gill F.J.** concurred.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula; Lawrence & Joseph.*